

Cath Petroskey - Re: [AGRI] House Committee - Written Testimony for SB0046 Action

From: "Rodney C. Nanney" <voterodney@gmail.com>
To: Cath Petroskey - House Ag Comm Clerk <cpetros@house.mi.gov>
Date: 6/20/2011 2:28 PM
Subject: Re: [AGRI] House Committee - Written Testimony for SB0046 Action

**PLEASE FORWARD TO THE FULL COMMITTEE AS WRITTEN TESTIMONY FOR
CONSIDERATION BEFORE ACTING ON SB0046**

Dear Committee members:

Since I will not be able to attend Wednesday's committee meeting where SB0046 will be considered and voted upon, I would ask that the committee consider the following recommendation for a change to this legislation:

Section 513(4) of the bill as approved by the Senate states:

(4) A LOCAL UNIT OF GOVERNMENT SHALL HOLD A HEARING ON AN APPLICATION FOR SPECIAL LAND USE APPROVAL UNDER SUBSECTION (2) NOT MORE THAN 60 DAYS AFTER THE APPLICATION IS FILED. FOR THE PURPOSES OF THIS SECTION, THE NOTICE REQUIRED UNDER SECTION 502(2) SHALL PROVIDE NOTICE OF THE HEARING, RATHER THAN NOTICE OF A RIGHT TO REQUEST A HEARING.

This would be an unprecedented change to the state Zoning Enabling Act, as there is no other land use or approval process expressly authorized by the Act which is blessed by this time limit on holding a hearing. There are also no penalties or consequences noted for failure of the township to hold such a hearing within the allotted time. While this may seem a trivial issue, it is not: Many rural township governments in Michigan (the target community for this legislation) only hold four (4) Planning Commission meetings per year (that is, once every THREE months).

If this bill passes with section (4) included "as is," then an application made immediately following one commission meeting (the most likely time to receive an application) would compel that community to pay for and hold a special meeting just for the request. Also, **should the township miss this arbitrary deadline, what happens? It appears to me that any future decision (after the deadline) would be legally vulnerable to nullification.**

I argued before the House committee that their original 30-day time limit was unprecedented in Michigan zoning law - and not practicable. I would argue that this Band-Aided 60-day deadline is also completely unnecessary. I strongly urge the committee to forward this legislation to the full House only after deleting section (4) in its entirety.

Keep in mind that the state laws governing township planning commissions only require those commissions to meet four (4) times per year - and for many a meeting is required first to set the hearing date with a second meeting to actually hold the hearing. **This proposed amendment should, at a minimum, be corrected to respect that fact in law.** For example, a change from 60 to a 95 day maximum would allow enough time for even the most rural township to comply. Should the committee disagree with deleting the language entirely, then I would recommend that, at a minimum, the provision be revised as follows (**proposed text in bold type**):

(4) A LOCAL UNIT OF GOVERNMENT SHALL HOLD A HEARING ON AN APPLICATION FOR SPECIAL LAND USE APPROVAL UNDER SUBSECTION (2) NOT MORE THAN **95 DAYS AFTER A COMPLETE AND ACCURATE APPLICATION HAS BEEN OFFICIALLY RECEIVED BY THE BODY OR OFFICIAL RESPONSIBLE FOR GRANTING SPECIAL LAND USE APPROVAL.** FOR THE PURPOSES OF THIS SECTION, THE NOTICE REQUIRED UNDER SECTION 502(2) SHALL PROVIDE NOTICE OF THE HEARING, RATHER THAN NOTICE OF A RIGHT TO REQUEST A HEARING.

This "complete and accurate application officially received..." language is necessary to prevent an applicant from "starting the clock" with an incomplete application. To determine that an application is complete is typically the first step in the review process for a planning commission (incomplete applications can be lawfully rejected and returned to an applicant without further review). If the timeline is viewed by the committee as an essential part of this legislation to protect potential applicants, then this clarification should be viewed as just as important to protect rural township governments.

Thank you for your consideration.

Respectfully submitted,

Rodney C. Nanney, AICP

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